LEMBAGA LEBUHRAYA MALAYSIA v. PENTADBIR TANAH DAERAH KLANG

HIGH COURT MALAYA, SHAH ALAM
WONG KIAN KHEONG J
[CIVIL SUIT NO: BA-15-35-02-2016]
13 MARCH 2019

CIVIL PROCEDURE: *Parties – Joinder – Land reference proceedings – Land owner withdrew application to intervene – Whether court could order joinder of land owner as co-respondent suo motu – Whether land owner 'person interested' under s. 2(1) read with s. 44(2) of Land Acquisition Act 1960 – Whether entitled to intervene – Whether affected by land reference – Whether joinder order would ensure finality in litigation – Rules of Court 2012, O. 1A, O. 2 r. 1(2), O. 15 r. 6(2)(b)(i) & (ii)*

LAND LAW: *Land acquisition – Compensation – Award of compensation leading to land references – Land owner withdrew application to intervene – Whether court could order joinder of land owner as co-respondent suo motu – Whether land owner 'person interested' under s. 2(1) read with s. 44(2) of Land Acquisition Act 1960 – Whether entitled to intervene – Whether affected by land reference – Whether joinder order would ensure finality in litigation – Rules of Court 2012, O. 1A, O. 2 r. 1(2), O. 15 r. 6(2)(b)(i) & (ii)*

The Selangor State Authority acquired part of seven lots of land belonging to Sime Darby Property (Klang) Sdn Bhd ('land owner') for a project. The Land Administrator ('LA') awarded compensation to the land owner for the acquired land which subsequently led to two land references by (i) Lembaga Lebuhraya Malaysia ('LLM') ('LLM's land reference'); and (ii) land owner ('land owner's land reference'). The two land references were simultaneously heard by the judge and two assessors. In the first two land references, the court decided, among others, that the amount of compensation for 'severance' and 'injurious affection' was reduced by RM5,631,966.72. On appeal by LLM, the Court of Appeal ordered a re-hearing of LLM's land reference ('second LLM's land reference'). In the second LLM's land reference, the judge allowed the land owner's application to intervene to the extent of allowing the land owner to submit on two specified issues of law. Based on the written submissions of LLM, LA and the land owner on the questions of law, the second LLM's land reference was dismissed without being heard on its merits. Hence, LLM appealed to the Court of Appeal wherein a third hearing of LLM's land reference was ordered by the Court of Appeal. In the third LLM's land reference, the land owner initially applied to intervene but the application was inexplicably withdrawn. Hence, the court, on its own motion, ordered the land owner to be joined as a co-

respondent in the third LLM's land reference. The sole issue herein was whether the court, on its own motion, could order a land owner to be joined as a co-respondent in a land reference filed by LLM pursuant to s. 37 of the Land Acquisition Act 1960 ('LAA') against an award of land compensation by the LA. The joinder was made premised on: (i) s. 44(2) of the LAA; and/or (ii) O. 15 r. 6(2)(b)(i) and/or (ii) read with O. 1A and O. 2 r. 1(2) of the Rules of Court 2012 ('ROC').

Held (ordering joinder on court's own motion):

(1) Section 2(1) of the LAA defines 'person interested' to include 'every person claiming an interest in compensation to be made on account of the acquisition of land' under the LAA. The land owner was clearly 'person interested' under s. 2(1) read with s. 44(2) of the LAA. Further, the land owner had participated in the enquiry before the LA under s. 12(1) of the LAA and had filed the land owner's land reference. As such, the land owner was entitled to intervene in the third LLM's land reference. Despite the land owner's withdrawal of its intervention application, the court exercised the powers *suo motu* under s. 44(2) of the LAA to make the joinder order. (para 7)

(2) The land owner was directly affected by the third LLM's land reference because, if the court allowed the third LLM's land reference, it would reduce the award which would then adversely affect the land owner. Hence, the land owner had a right to be heard before the court decides the third LLM's land reference. Such right is in consonance with rights to property as guaranteed by art. 13(1) and (2) of the Federal Constitution. The joinder order would also ensure finality in litigation regarding the amount of compensation to be awarded for the acquired land, a need which was accentuated by the fact that LLM's land reference was heard for the third time. (para 7)

(3) Based on s. 45(2) of the LAA, O. 1A, O. 2 r. 1(2) and O. 15 r. 6(2)(b)(i) and/or (ii) of the ROC are not inconsistent with LAA and could therefore apply to land reference proceedings. Order 15 r. 16(2)(b)(i) was satisfied because the land owner 'ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon.' There existed 'a question or issue arising out of or relating to or connected with' the award between LLM and the land owner 'which, in the opinion of the court, would be just and convenient to determine' as between LLM and the land owner. Therefore, O. 15 r. 6(2)(b)(ii) was also satisfied. Further, the wording of O. 15 r. 6(2) of the ROC expressly allows the court to

act *suo motu* to join a party. Premised on O. 1A and O. 2 r. 1(2) of the ROC, in the interest of justice, the court made the joinder order under O. 15 r. 6(2)(b)(i) and/or (ii) of the ROC. (para 8)

Case(s) referred to:
Chow Chuan Fat v. Yeo Chai Seng & Ors [2016] 1 LNS 1407 HC ***(refd)***
MBf Property Services Sdn Bhd v. Madihill Development Sdn Bhd & Ors [1998] 1 CLJ Supp 110 HC ***(refd)***
Tenaga Nasional Bhd v. Unggul Tangkas Sdn Bhd & Anor and Other Appeals [2018] 4 CLJ 285 FC ***(refd)***
Tsoi Ping Kwan v. Medan Juta Sdn Bhd & Ors [1996] 4 CLJ 553 CA ***(refd)***

Legislation referred to:
Federal Constitution, art. 4(1), 13(1), (2)
Land Acquisition Act 1960, ss. 2(1), 12(1), 37(1), 44(2), 45(2)
Rules of Court 2012, O. 1A, O. 2 r. 1(2), O. 15 r. 6(2)(b)(i), (ii)

For the applicant - Shahman Sangaran; M/s Kumar Jaspal Quah & Aishah
For the respondent - Etty Eliany Tesno; State Legal Advisor, Selangor

Reported by S Barathi

JUDGMENT

(Joinder of land owner in land reference proceedings)

Wong Kian Kheong J:

Introduction

[1] This judgment discusses the sole issue of whether the court of its own motion (*suo motu*) can order a land owner to be joined as a co-respondent in a land reference filed by Lembaga Lebuhraya Malaysia (LLM) pursuant to s. 37(1) of the Land Acquisition Act 1960 (LAA) against an award of land compensation by the Land Administrator's (LA).

Background

[2] This land reference is "unique" in the following sense:

(i) on behalf of LLM, the Selangor State Authority has acquired part of seven lots of land (acquired land) belonging to Sime Darby Property (Klang) Sdn. Bhd. (land owner) for the West Coast Expressway project. The LA had decided the amount of compensation payable to the land owner for the acquired land as RM169,296,852.60 (award). Regarding the award, the following two land references to the High Court (first two land references) had been filed by:

(a) LLM (LLM's land reference); and

(b) Land owner (land owner's land reference).

Surprisingly, there was no consolidation or joint hearing of the first two land references before Mohd. Yazid bin Mustafa J and two assessors (first land reference court). However, the first two land references were simultaneously heard by the first land reference court;

(ii) in the first two land references, the first land reference court decided, among others, that the amount of compensation for "severance" and "injurious affection" was reduced by RM5,631,966.72 (first land reference court's decision). LLM appealed to the Court of Appeal against the first land reference court's decision (first appeal). No appeal to the Court of Appeal had been filed by the land owner against the first land reference court's decision;

(iii) in the first appeal:

(a) the land owner was not made a co-respondent by LLM. Nor did the land owner apply for leave of the Court of Appeal to intervene in the first appeal; and

(b) the Court of Appeal ordered a re-hearing of LLM's land reference (second LLM's land reference);

(iv) the second LLM's land reference was heard by Akhtar bin Tahir J (second land reference court). In the second LLM's land reference:

(a) the land owner applied to intervene in the second LLM's land reference. The second land reference court allowed this application only to the extent of allowing the land owner to submit on two specified issues of law (legal questions); and

(b) based on the written submissions of LLM, LA and the land owner on the legal questions, the second land reference court dismissed the second LLM's land reference with no order as to costs and without hearing the second LLM's land reference on its merits (second land reference court's decision);

(v) LLM appealed to the Court of Appeal against the second land reference court's decision (second appeal). In the second appeal, the Court of Appeal ordered a third hearing of LLM's reference (third LLM's land reference); and

(vi) the third LLM's land reference is now heard by me. In the third LLM's land reference:

(a) the land owner initially applied to intervene in the third LLM's land reference. Inexplicably, the land owner withdrew this application; and

(b) acting on my own motion under ss. 44(2) and 45(2) of the LAA read with O. 1A, O. 2 r. 1(2) and O. 15 r. 6(2) of the Rules of Court 2012 (RC), I ordered the land owner to be joined as a co-respondent in the third LLM's land reference (joinder order).

[3] LLM has now appealed to the Court of Appeal against the joinder order. This judgment provides my reasons for the joinder order.

Whether Court Should Make Joinder Order On Its Own Motion

[4] Sections 44(2) and 45(2) LAA provide as follows:

44(2) The Court shall consider the interests of all persons interested who have not accepted the award, whether those persons have themselves made an objection or not.

45(2) Save in so far as they may be inconsistent with anything contained in this Act, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act. (emphasis added).

[5] I reproduce below O. 1A, O. 2 r. 1(2) and the relevant part of O. 15 r. 6(2)(b)(i) and (ii) of the RC:

Regard shall be to justice

O. 1A In administering these Rules, the Court or a Judge shall have regard to the overriding interest of justice and not only to the technical non-compliance with these Rules.

O. 2 r. 1(2) These Rules are a procedural code and subject to the overriding objective of enabling the Court to deal with cases justly. The parties are required to assist the Court to achieve this overriding objective.

r. 6(2) Subject to this rule, at any stage of the proceedings in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application:

…

(b) order any of the following persons to be added as a party, namely:

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

(emphasis added).

[6] The joinder order is made premised on one or both of the following grounds:

(i) s. 44(2) of the LAA; and/or

(ii) O. 15 r. 6(2)(b)(i) and/or (ii) read with O. 1A and O. 2 r. 1(2) of the RC.

[7] Firstly, I made the land owner as a co-respondent pursuant to s. 44(2) of the LAA because:

(i) s. 2(1) of the LAA defines "person interested" to include "every person claiming an interest in compensation to be made on account of the acquisition of land" under LAA. The land owner is clearly a "person interested" under s. 2(1) read with s. 44(2) of the LAA;

(ii) the land owner has not accepted the award by filing the land owner's land reference;

(iii) s. 44(2) of the LAA employs the use of a mandatory term "shall". Accordingly, this court "shall" consider the interest of the land owner in this third LLM's land reference by making the joinder order. The mandatory effect of s. 44(2) of the LAA is explained in the Federal Court's decision in *Tenaga Nasional Bhd v. Unggul Tangkas Sdn Bhd & Anor and Other Appeals* [2018] 4 CLJ 285. In *Tenaga Nasional Bhd*, the Federal Court upheld the Court of Appeal's refusal to allow the appellant, Tenaga Nasional Bhd (TNB), the paymaster of land compensation in that case, to intervene in land reference proceedings. Zulkefli Ahmad Makinudin PCA decided as follows in *Tenaga Nasional Bhd*, at [37]:

> [37] It is our judgment that TNB had no legal interest in the land reference proceedings. TNB being the paymaster, it had at the highest only a pecuniary interest. (See the case of *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344). The evidence in the present case showed that TNB was not aggrieved by the award but was merely apprehensive that the outcome of the land reference proceedings in the High Court may adversely affect its pocket. *At any rate, TNB's rights on whose behalf acquisition proceedings were instituted (see s. 43 of the Act) and whose interests must be considered by the court whether they have objected or not (see s. 44(2) of the Act) without the need for intervention.* (emphasis added).

Despite not allowing TNB to intervene in the land reference proceedings in *Tenaga Nasional Bhd*, the Federal Court held that the land reference court "must" consider TNB's interest pursuant to s. 44(2) of the LAA. In this case, the land owner had participated in the enquiry before the

LA under s. 12(1) of the LAA and had filed the land owner's land reference. As such, the land owner is entitled to intervene in the third LLM's land reference. Despite the land owner's withdrawal of its intervention application, I exercise my powers *suo motu* under s. 44(2) of the LAA to make the joinder order; and

(iv) the joinder order is supported by the following reasons:

(a) the land owner is directly affected by the third LLM's land reference. This is because, if this court allows the third LLM's land reference, this will reduce the award which will then adversely affect the land owner. Hence, the land owner has a right to be heard before this court decides the third LLM's land reference. Such a right is in consonance with rights to property as guaranteed by art. 13(1) and (2) of the Federal Constitution (FC), our supreme law (please see art. 4(1) of the FC). Article 13(1) and (2) of the FC provide as follows:

> **Rights to property**
>
> 13(1) **No person shall be deprived of property save in accordance with law.**
>
> (2) **No law shall provide for the compulsory acquisition or use of property without adequate compensation.**
>
> (emphasis added); and

(b) if the joinder order is not made and if this court reduces the award (reduced award), the land owner may subsequently apply to this court or file a new suit to set aside the reduced award on the ground that the second rule of natural justice has been breached (because the land owner has not been given a right to be heard in the third LLM's land reference) – please see *Chow Chuan Fat v. Yeo Chai Seng & Ors* [2016] 1 LNS 1407; [2017] 1 AMR 676, at [20(5)], [21] and [22]. The joinder order thereby ensures finality in litigation regarding the amount of compensation to be awarded for the acquired land. The need for finality in this case is accentuated by the fact that LLM's land reference is now heard for a third time (as ordered by two Court of Appeal's decisions).

[8] Additionally or alternatively, the joinder order is premised on O. 15 r. 6(2)(b)(i) and/or (ii) read with O. 1A and O. 2 r. 1(2) of the RC as follows:

(i) according to s. 45(2) of the LAA, a provision in RC can only apply to land reference proceedings if that provision is not inconsistent with LAA. I am of the view that O. 1A, O. 2 r. 1(2) and O. 15 r. 6(2)(b)(i) and/or (ii) of the RC are not inconsistent with LAA and can therefore apply to land reference proceedings;

(ii) the court may join a person (who is originally not a party in a proceedings) as a party in the proceedings under O. 15 r. 6(2)(b)(i) of the RC (first limb) or O. 15 r. 6(2)(b)(ii) of the RC (second limb). In this case:

(a) the first limb is satisfied because the land owner "ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon"; and/or

(b) the second limb is fulfilled as between LLM and the land owner, there exists "a question or issue arising out of or relating to or connected with" the award (relief or remedy claimed by LLM) in this case "which, in the opinion of the court, would be just and convenient to determine" as between LLM and the land owner;

(iii) the wording of O. 15 r. 6(2) of the RC (of its own motion) expressly allows the court to act *suo motu* to join a party. I rely on the following cases:

(a) in *Tsoi Ping Kwan v. Medan Juta Sdn Bhd & Anor* [1996] 4 CLJ 553; [1996] 3 MLJ 367, the Court of Appeal acted of its own motion to join a company (which was not a party in the suit before the High Court) at an appellate stage. I cite the following passage of Gopal Sri Ram JCA's (as he then was) judgment in *Tsoi Ping Kwan*, at pp. 565 & 566 (CLJ); pp. 379-380 (MLJ):

> *After having heard Mr Wong Chong Wah on the appellant's behalf, and Mr Abraham on behalf of the first respondent, we were satisfied that as between the appellant and the first respondent, the balance of justice certainly swung in the former's favour in having the caveat restored to the title. But that was not the end of the matter. The problem had been compounded by the transfer of the lands to Ayer Hitam. Any order that we were prepared to make at that stage would have most certainly resulted in serious prejudice to Ayer Hitam as the transferee, and it was not before us. We therefore considered it essential, as a matter of natural justice, that we should have evidence from Ayer Hitam and hear counsel on its behalf before finally deciding where the justice of the case lay.*
>
> *Therefore, in order to achieve the ends of justice, we made the following orders and gave the following directions:*
>
> (i) that the appeal be allowed to the limited extent that the caveats be restored to the register documents of title until further order of this court;

(ii) that *Ayer Hitam be added as a second respondent to the appeal*;

(iii) that *the title to this appeal be amended accordingly*;

(iv) that *the appellant do forthwith, that is to say, before the close of business on 7 August 1996, serve a copy of the record of appeal on solicitors for Ayer Hitam*; and

(v) that *Ayer Hitam as the added second respondent be at liberty to file an affidavit in support of its case.*

This court has ample jurisdiction under O. 15 r. 6(2)(b) of the Rules of the High Court 1980 read with r. 4 of the Rules of the Court of Appeal 1994 to make these orders. See Tong Swee King v. Pegang Mining Co Ltd & Ors [1967] 2 MLJ 214, affirmed sub nom Pegang Mining Co Ltd v. Choong Sam & Ors [1969] 2 MLJ 52.

The appeal was then adjourned to 16 August 1996 to hear arguments from the second respondent as to why the caveats should not continue to remain on the register of the lands of which it was now the registered proprietor.

(emphasis added); and

(b) Abdul Malik Ishak J (as he then was) acted *suo motu* and joined four non-parties as co-defendants in the High Court case of *MBf Property Services Sdn Bhd v. Madihill Development Sdn Bhd & Ors* [1998] 1 CLJ Supp 110, at 112-114;

(iv) Order 1A provides that RC (including O. 15 r. 6(2) of the RC) should be administered with regard to the overriding interest of justice. Order 2 r. 1(2) of the RC states that RC are subject to the overriding objective of enabling the court to deal with cases justly. Premised on O. 1A and O. 2 r. 1(2) of the RC, in the interest of justice, I have no hesitation to make the joinder order under O. 15 r. 6(2)(b)(i) and/or (ii) of the RC because the land owner is directly affected by the third LLM's land reference and has a right to be heard before this court decides the 3rd LLM's land reference – please see the above sub-para. 7(iv)(a); and

(v) the joinder order is also made under O. 15 r. 6(2)(b)(i) and/or (ii) to ensure finality in this matter – please refer to the above sub-para. 7(iv)(b).